

ROBBINS GELLER RUDMAN  
& DOWD LLP  
SHAWN A. WILLIAMS (213113)  
DENNIS J. HERMAN (220163)  
Post Montgomery Center  
One Montgomery Street, Suite 1800  
San Francisco, CA 94104  
Telephone: 415/288-4545  
415/288-4534 (fax)  
shawnw@rgrdlaw.com  
dherman@rgrdlaw.com  
– and –

PAUL J. GELLER  
STUART A. DAVIDSON (*pro hac vice*)  
MARK J. DEARMAN (*pro hac vice*)  
BAILIE L. HEIKKINEN  
KATHLEEN L. BARBER  
120 East Palmetto Park Road, Suite 500  
Boca Raton, FL 33432  
Telephone: 561/750-3000  
561/750-3364 (fax)  
pgeller@rgrdlaw.com  
sdavidson@rgrdlaw.com  
mdearman@rgrdlaw.com  
bheikkinen@rgrdlaw.com  
kbarber@rgrdlaw.com

FARMER, JAFFE, WEISSING, EDWARDS,  
FISTOS & LEHRMAN, P.L.  
STEVEN R. JAFFE  
SETH M. LEHRMAN (178303)  
MARK FISTOS  
425 North Andrews Avenue, Suite 2  
Fort Lauderdale, FL 33301  
Telephone: 954/524-2820  
954/524-2822 (fax)  
steve@pathtojustice.com  
seth@pathtojustice.com  
mark@pathtojustice.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

COLIN FRASER, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

vs.

ASUS COMPUTER INTERNATIONAL, et  
al.,

Defendants.

No. 12-cv-00652-WHA

CLASS ACTION

UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF REVISED  
CLASS ACTION SETTLEMENT,  
CERTIFICATION OF THE SETTLEMENT  
CLASS, SETTING A HEARING ON FINAL  
APPROVAL OF SETTLEMENT, AND  
DIRECTING NOTICE TO THE CLASS

1 Plaintiff Colin Fraser (“Fraser” or “Plaintiff”), pursuant to Rule 23(e) of the Federal Rules of  
 2 Civil Procedure, respectfully moves for an order granting preliminary approval of the revised class  
 3 action settlement entered into between Plaintiff and defendants Asus Computer International (“ACI”)  
 4 and ASUSTek Computer Inc. (“ASUS”) (collectively, “Asus” or “Defendants,” and together with  
 5 Plaintiff, the “Parties”), as embodied in the Revised Settlement Agreement and Release dated  
 6 February 11, 2013 (the “Revised Settlement Agreement”),<sup>1</sup> conditionally certifying the Settlement  
 7 Class,<sup>2</sup> setting a hearing for final approval of the proposed settlement, and directing notice to the  
 8 Class. In support, Plaintiff states as follows:

9 1. On October 1, 2012, following Plaintiff and Defendants’ entry into a Settlement  
 10 Agreement and Release, Plaintiff filed an Unopposed Motion for Preliminary Approval of Class  
 11 Action Settlement, Certification of the Settlement Class, Setting a Hearing on Final Approval of  
 12 Settlement and Memorandum of Points and Authorities in Support (“Plaintiff’s Unopposed Motion  
 13 for Preliminary Approval”) [Dkt. No. 46]. A hearing was held on November 8, 2012, and on  
 14 December 21, 2012, this Court entered an Order Denying Motion For Preliminary Approval of  
 15 Settlement (“Order”) [Dkt. No. 61].

16 2. Counsel for the Parties carefully considered the Court’s Order and have entered into a  
 17 Revised Settlement Agreement that is consistent therewith.

18 3. The Court has scheduled a hearing on February 21, 2013, to allow the Parties to  
 19 present the Revised Settlement Agreement to the Court.

20 4. This Motion incorporates by reference the arguments advanced by Plaintiff in support  
 21 of preliminary approval, conditional class certification, and approval of the form and manner of  
 22 \_\_\_\_\_

23 <sup>1</sup> The Revised Settlement Agreement is attached hereto as Exhibit 1. Also, attached as exhibits  
 24 to the to the Revised Settlement Agreement are the Parties’ proposed Full Notice, Summary Notice,  
 25 Claim Form, Conditional Approval Order, and Final Judgment. The Revised Settlement Agreement  
 26 is not yet executed by Defendants as it is the Chinese New Year and they are on holiday. Counsel for  
 Defendants will execute the Revised Settlement Agreement and has represented that his Clients will  
 do the same before the hearing on February 21, 2013.

27 <sup>2</sup> All terms and definitions used herein have the same meanings as set forth in the Revised  
 Settlement Agreement.  
 28

1 notice in Plaintiff's Unopposed Motion for Preliminary Approval. In addition, this Motion describes  
2 the revisions to the prior proposed settlement. *See also* Declaration of Mark Dearman in Support of  
3 Plaintiffs' Unopposed Motion For Preliminary Approval of Revised Class Settlement, dated February  
4 11, 2013 and attached as Exhibit 2 ("Dearman Declaration").

5         5.       **First**, the definitions of "Releasing Person" (Definition No. 18) and "Settlement Class  
6 Member" (Definition No. 21) have been revised to include only those members of the Settlement  
7 Class who participate in the settlement.. Only these individuals will be bound by the release and final  
8 judgment. Any Class member who does not participate in the settlement will not have their rights  
9 compromised or affected by the settlement in any way. *See* Dearman Declaration at ¶4(a).

10         6.       **Second**, the "Claims Period" (Definition No. 5) has been extended from 45 days to 60  
11 days. *See* Dearman Declaration at ¶4(b).

12         7.       **Third**, Class Counsel have agreed to waive any right they may have to apply to the  
13 Court for an award of attorneys' fees in connection with the Revised Settlement Agreement, and will  
14 only seek reimbursement of their actual out-of-pocket expenses, as well as the stipend payments to  
15 Plaintiff and the Cooperating Class Members, as previously requested in the Unopposed Motion for  
16 Preliminary Approval. *See* Dearman Declaration at ¶4(c).

17         8.       As the Revised Settlement Agreement directly addresses the issues raised by the Court  
18 in its Order, Plaintiff now respectfully requests that the Court conditionally certify the Settlement  
19 Class, schedule a Final Approval Hearing, and direct that notice to be sent to Class Members in the  
20 form and manner described in the Revised Settlement Agreement.

21         9.       Plaintiff proposes that the Court require all notices be disseminated no later than 35  
22 days after the entry of a Conditional Approval Order. Plaintiff further requests that briefs in support  
23 of final approval of the proposed revised settlement be filed, if at all, no later than 35 days prior to the  
24 Final Approval Hearing date and that Class Members' objections be filed no later than 21 days before  
25 the Final Approval Hearing date. Finally, Plaintiff respectfully requests an opportunity to file a reply  
26 brief addressing any objections ten days prior to the Final Approval Hearing date.

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1 WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests the Court to  
2 preliminarily certify the settlement class, schedule a final approval hearing, and direct notice to be  
3 sent to class members.

4  
5 DATED: February 11, 2013

ROBBINS GELLER RUDMAN  
& DOWD LLP  
PAUL J. GELLER  
STUART A. DAVIDSON (*pro hac vice*)  
MARK J. DEARMAN (*pro hac vice*)  
BAILIE L. HEIKKINEN  
KATHLEEN L. BARBER

9  
10 *s/ Mark Dearman*  
MARK J. DEARMAN

11 120 East Palmetto Park Road, Suite 500  
12 Boca Raton, FL 33432  
13 Telephone: 561/750-3000  
561/750-3364 (fax)

14 ROBBINS GELLER RUDMAN  
& DOWD LLP  
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425 North Andrews Avenue, Suite 2  
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24 Attorneys for Plaintiff and Interim Class Counsel  
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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2013, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 11, 2013.

s/ Mark Dearman

MARK DEARMAN

ROBBINS GELLER RUDMAN  
& DOWD LLP

120 East Palmetto Park Road, Suite 500

Boca Raton, FL 33432

Telephone: 561/750-3000

561/750-3364 (fax)

E-mail: mdearman@rgrdlaw.com